

APPEARING that Defendant cites to *U.S. v. Carty*, 264 F.3d 191, 196 (2d Cir. 1981), in which the Second Circuit Court of Appeals found that the sentencing court erred in finding that it lacked authority to consider the defendant's application for downward departure based upon the conditions of his pre-sentence confinement, and explaining that at the time of sentencing courts may consider pre-sentence conditions of confinement as a basis for downward departure from the sentencing guidelines; and it further

APPEARING that Plaintiff is not arguing that the Court erred in his sentence, and that at his sentencing hearing, Plaintiff did not request a downward departure based on the conditions of his pre-sentence confinement; and it further

APPEARING that courts “may not modify a term of imprisonment once it has been imposed” except: (1) upon motion of the Director of the Bureau of Prisons, (2) where expressly permitted by statute or Rule 35 of the Federal Rules of Civil Procedure; or (3) where a “a defendant who has been sentenced to a term of imprisonment based on a sentencing range that has subsequently been lowered by the Sentencing Commission pursuant to 28 U.S.C. 994(o),” 18 U.S.C. § 3582 (c); and it further

APPEARING that none of the requirements set forth in Title 18 of the United States Code, Section 3582(c) are present in this case, and the Court does not have jurisdiction to reduce Defendant’s sentence; therefore

IT IS on this 27th day of June 2008,

ORDERED that Defendant’s request for reconsideration and reduction of sentence is denied.

s/ Stanley R. Chesler
Stanley R. Chesler
United States District Judge